

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

WATER QUALITY CONTROL COMMISSION

REGULATION NO. 51

WATER POLLUTION CONTROL REVOLVING FUND RULES

5 CCR 1002-51

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Water Quality Control Commission

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51.1 AUTHORITY AND PURPOSE OF THE WATER POLLUTION CONTROL REVOLVING FUND

The Water Pollution Control Revolving Fund ("WPCRF") was authorized by Congress in Title II and Title VI of the 1987 Amendments to the Clean Water Act ("Federal Act"). Additional provisions are provided in the Water Resources Reform and Development Act of 2014 ("WRRDA") and are amendments to Titles I, II, V, and VI of the Federal Act.

Senate Bill 50 (1988) authorized the State to participate in the WPCRF by amending the Colorado Water Resources and Power Development Authority Act, Title 37 of Article 95, C.R.S. ("Authority Act"); this allows the Colorado Water Resources and Power Development Authority ("Authority") to provide funds for the State's twenty percent match required by the Federal Act. §§ 37-95-103 and 37-95-107.6, C.R.S.

Sections 25-8-202 (1)(e) and (g), C.R.S., of the Colorado Water Quality Control Act ("State Act") also provide the Water Quality Control Commission ("Commission") and the Water Quality Control Division ("Division") with the authority to promulgate, implement, and administer this regulation.

The purpose of the WPCRF is to provide financial assistance to governmental agencies for the construction of any project as defined herein that appears on the Project Eligibility List included in the annual Intended Use Plan.

51.2 DEFINITIONS

See the State Act, the Authority Act, and the Federal Act for additional definitions.

- (1) "Beneficial Use" - The use or reuse of treatment works effluent or the use of biosolids to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land. Also means a use of water, including the method of diversion, storage, transportation, treatment and application; that is reasonable and consistent with the public interest in the proper utilization of water.
- (2) "Best Management Practices" (as found in the definition of "Section 319") - A practice or combination of practices determined to be the most effective, practicable means of preventing or reducing the amount of pollution generated by a nonpoint source to a level compatible with water/stream quality goals. These include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures.
- (3) "Biosolids" - The accumulated residual product resulting from processing waste materials from a wastewater and water treatment plant.
- (4) "Collection System" (as found in the definition of "On-site wastewater treatment system" and "Treatment Works") - A system of sewers used to collect wastewater and convey the wastewater by gravity or pressure flow to a common point.

- (5) "Governmental Agencies" - Departments, divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts (as approved by a district court to enter into a contract to accept funding for a wastewater related project under the WPCRF), municipal corporations, counties, cities and other political subdivisions, the United States or any agency thereof, and any agency commission or authority established pursuant to an interstate compact or agreement.
- (6) "Green Infrastructure" - Green Infrastructure includes energy efficiency, water efficiency, environmentally innovative technologies and wet weather management that takes advantage of those sustainable functions and services in the natural environment. Green Infrastructure planning approaches and management technologies apply stormwater treatment practices including infiltration, evapotranspiration, and rain harvesting/reuse in order to maintain, restore, or mimic natural hydrologies. On a regional scale, Green Infrastructure is the preservation, restoration, and stabilization of natural features such as forests, meadows, floodplains, wetlands, and receiving waters to allow for wildlife habitat and passage. Coupled with policies such as infill and redevelopment that reduce the effective imperviousness within a watershed, Green Infrastructure applies techniques similar to those found in nature to preserve ecological function and create balance between built and natural environments.
- (7) "Impaired Water" - State waters for which credible scientific data exists to demonstrate that the water body does not support its designated beneficial uses and/or does not meet one or more adopted water quality standards and has been identified as impaired in Regulation No. 93 – Colorado's Section 303(d) List of Impaired Waters (5 CCR 1002-93).
- (8) "Municipal Separate Storm Sewer Systems (MS4s)" (as found in the definition of "Section 319") – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are owned or operated by a state, city, town, county, district, or other public body created pursuant to state law and for which a National Pollutant Discharge Elimination System (NPDES) permit must be obtained.
- (9) "Nonpoint Source (NPS)" - A diffused pollution source that is not regulated as a point source, including, but not limited to, sources that are often associated with agriculture, inactive or abandoned mining, silviculture, urban runoff, or runoff from construction activities. NPS pollution does not emanate from a discernible, confined, and discrete conveyance (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation.
- (10) "Nontraditional Project" - A project for which the primary purpose is other than water quality, but which has an additional purpose that is clearly related to the improvement or protection of water quality (e.g. the liner portion of a new landfill is intended to protect water quality).
- (11) "On-site Wastewater Treatment System" – A combination of components that may include onsite septic tanks or cluster systems that are designed to treat, neutralize, stabilize, store or dispose of sewage and that is not part of, or connected to, a centralized sewage collection system or treatment works.
- (12) "Point Source" (as found in the definition of "Nonpoint Source (NPS)") - Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Point source does not include agricultural stormwater discharges and return flows from irrigated agriculture.
- (13) "Pollution" - The man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

- (14) "Project" - A specific improvement to a water quality management system, phase or segment.
- (15) "Project Eligibility List" - The list of projects eligible for financial assistance from the Authority through the WPCRF or its other funding capabilities, as adopted and modified in accordance with section 37-95-107.6(4).
- (16) "Projected Loan List" – The list of projects that has been partially scored in accordance with the criteria described in the Intended Use Plan. This list represents those projects that may be reasonably anticipated to receive a binding commitment for a loan in the WPCRF program. Projects can be moved from the Project Eligibility List to the Projected Loan List at any time during the year.
- (17) "Public Health Hazard" - Any contamination of ground or surface waters, caused by inadequate treatment works or disposal of inadequately treated sludge, which potentially endangers public health through contamination of drinking water supplies or direct public exposure. To qualify as a public health hazard, the contamination must be documented by means of a sanitary survey or engineering report submitted by a governmental agency to the Division.
- (18) "Reclaimed Water" - Domestic wastewater that has received secondary treatment by a domestic wastewater treatment works and such additional treatment as to enable the wastewater to meet the standards for approved uses as found in Regulation # 84 (5 CCR 1002-84).
- (19) "Section 212" - The section of the Federal Act that provides the statutory authority for programs funded by the WPCRF for the construction of publicly owned treatment works ("POTWs"). Projects eligible for funding under Section 212 may include, but are not limited to, the capital costs for wastewater collection and treatment, municipal stormwater projects, combined sewer overflow, sanitary sewer overflow, pipes, storage and treatment systems, green infrastructure, municipal landfill projects, water conservation and reclaimed water, energy conservation and efficiency, security, decentralized wastewater treatment systems.
- (20) "Section 319" - The section of the Federal Act that provides the statutory authority for programs funded by the WPCRF for the development and execution of comprehensive conservation management plans. Eligible projects under Section 319 may include, but are not limited to, projects that address run-off associated with agricultural activities or abandoned mining operations, and the implementation of best management practices, aging and/or failing on-site wastewater treatment systems, stormwater run-off outside of municipal separate storm sewer system--permitted projects, brownfield contamination, atmospheric deposition, and leaking underground storage tanks.
- (21) "Sewage Sludge" (as found in the definition of "Treatment Works") - Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in wastewater treatment processes; and any material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or material generated from preliminary treatment of domestic sewage in a treatment works.
- (22) "Traditional Project"- A project for which the primary purpose is water quality protection.
- (23) "Sustainability Projects" - Projects and/or planning methodologies that promote sustainable wastewater systems through effective utility management to promote: the conservation of natural resources; alternative approaches such as natural or "green" systems; or innovative approaches and technologies; and consideration of the full life-cycle costs on infrastructure investments (EPA's Clean Water and Drinking Water Infrastructure Sustainability Policy).

- (24) "Treatment Works" - Any devices and systems used in the storage, treatment, recycling or reclamation of municipal sewage, sewage sludge, and biosolids, or industrial wastes of a liquid nature or necessary to recycle or reclaimed water or biosolids, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as stand-by treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application), or is used for ultimate disposal of residues resulting from such treatment. In addition, Treatment Works means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of domestic wastewater, including stormwater runoff, or industrial waste, or waste in combined stormwater and sanitary sewer systems.
- (25) "Water Quality Management Plan" - The plan for managing water quality, including consideration of the relationship of water quality to land and water resources and uses, on an areawide basis, for each planning area designated pursuant to sections 208(a) and 303(e) and 319 of the Federal Act.
- (26) "Water Quality Management System" - Any treatment works or any other system for disposal of sewage, biosolids, and industrial waste, or NPS pollution control, stormwater protection, ground water protection, and treatment operated by a governmental agency.
- (27) "Watershed" - A geographical area in which activities may significantly impact a water body (or segment of concern) or an underlying aquifer. There are several considerations in defining the geographical scope of a watershed: hydrology, political boundaries, uses to be protected, nature of the water quality problem, manageability, available resources, and public interest.

51.3 INTENDED USE PLAN

- (1) The Division, in cooperation with the Division of Local Government (DLG) and the Authority, shall submit to EPA as part of its application for a capitalization grant an annual Intended Use Plan ("IUP"), which shall include the Project Eligibility List and information about how the State will assist communities with their water quality needs. The Division shall recommend the IUP to the Commission each year for final agency action after public notice, public comment, and public hearing in order to comply with the Federal Act.
- (2) The IUP shall include as a minimum:
- (a) A list of projects for construction of publicly owned Treatment Works and projects/activities eligible for assistance under sections 212 and 319 of the Federal Act. This list must include the name of the community, permit number or other applicable enforceable requirements (if available), the type of financial assistance, and the projected amount of eligible assistance. (Permit numbers and other applicable enforceable requirements will be made available upon request);
 - (b) A description of the short-term and long-term goals of the State's WPCRF;
 - (c) Information on the types of activities, as opposed to project level details, to be supported by the WPCRF, including the eligible cost categories, types of assistance to be provided (e.g., loans, guarantees, insurance), terms of financial assistance, types of communities to be served by the fund, and administrative costs;
 - (d) Assurances and specific proposals on how the State intends to meet the requirements of the Federal Act; and

- (e) The criteria and method established for the prioritization of projects and distribution of funds.

51.4 GENERAL POLICIES

- (1) The Commission will consider protection of public health and water quality when determining the Water Quality Management System projects eligible for WPCRF participation.
- (2) The Commission will maintain and improve water quality in the State by providing accessibility to the WPCRF.
- (3) The Commission will support implementation of traditional and nontraditional projects to meet water quality needs.
- (4) The Commission will encourage regionalization of Water Quality Management Systems where practicable. It is the policy of the Commission to encourage good local planning within the concept of a Water Quality Management Plan. Projects shall conform to a state-approved plan, e.g., Water Quality Management Plan and NPS Management Plan as updated from time to time, or they may not be considered for assistance through the WPCRF.
- (5) The Commission will promote biosolids disposal methods for beneficial use as opposed to other sludge disposal methods. The Commission will also promote water conservation and reclaimed water measures, as well as green infrastructure approaches to water pollution issues caused by stormwater run-off in both urban and rural environments.
- (6) The Commission intends to identify projects for the Project Eligibility List that will address the long- term water quality needs in Colorado.
- (7) To be eligible to receive assistance from the WPCRF, governmental agencies must complete a planning document identifying a specific project that is cost-effective, environmentally acceptable, and consistent with applicable local, state and federal regulations and guidelines. The Division will review those projects to which environmental assessments and public participation requirements apply in accordance with the EPA-approved State Environmental Review Policy.
- (8) Eligible projects may include, but are not limited to, publicly owned treatment works, nonpoint source and stormwater pollution control projects, water conservation projects, reclaimed water projects and biosolids projects. Funding for nontraditional projects shall be limited to that portion of the project that is related to protecting or improving water quality.
- (9) The Commission may amend the Project Eligibility List at any time throughout the year to include projects that it determines and declares to be emergency projects needed to prevent or address threats to public health or environment. In cases where the Commission determines the amendments will result in substantial changes to the Project Eligibility List, public notice and opportunity for comment on the proposed inclusion shall be provided.
- (10) The Projected Loan List will identify the governmental agencies that will enter into the loan agreements and repay the loans. Before receiving WPCRF funding, the governmental agencies must develop and/or maintain a user charge and fee system or other financial mechanism to ensure operation, maintenance, and replacement needs are met, and to ensure repayment of any WPCRF loan and existing debt. The WPCRF criteria for the financial capability review of applicants are included in the State/EPA Operating Agreement, which is available from the Division for review.
- (11) Each year, after a public notice and comment period, the Commission will schedule a public hearing for approval of the IUP. Each Governmental Agency on the proposed Project Eligibility

List will receive notification of the hearing. After considering all pertinent comments, the Commission shall approve the IUP and adopt additions and modifications to the Project Eligibility List no later than December 31st of each year. The Division will establish a date each year for finalizing its proposal to the Commission for the IUP and Projected Loan List. After that date, any requests for changes must be transmitted directly to the Commission.

- (12) All loan project proponents shall submit applications by deadlines established in the annual IUP. If it is determined that the WPCRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year, projects will be funded in priority order until all funds are obligated.

51.5 PROCEDURES FOR IDENTIFYING PROJECTS AND ESTABLISHING THE PROJECT ELIGIBILITY LIST

- (1) Each year the Division shall, after consultation with interested persons and entities, including but not limited to the DLG, the Authority, designated regional water quality planning organizations, watershed planning organizations, and nonpoint source management interests, review, update, and compile a Project Eligibility List that contains a project description that will improve or benefit water quality which may include, but is not limited to, the following examples: impact on public health; impact on fish and wildlife; impact on the ecosystem; improving water quality to meet applicable standards for streams, lakes, and ground water; and protection of classified uses.

This Project Eligibility List shall be included in the IUP as an Appendix and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing.

- (2) The Project Eligibility List shall be comprised of five types of projects:
 - (a) Type A includes those projects that correct a documented public health hazard as defined in the WPCRF Rules.
 - (b) Type B includes those projects that improve water quality in an impaired water body; contribute to the prevention of a public health hazard; enable an entity to maintain permit compliance; or enable an entity to address a possible future effluent limit or emerging water quality issue.
 - (c) Type C includes those projects that implement a watershed/nonpoint source management plan.
 - (d) Type D includes those projects that implement a source water protection plan.
 - (e) Type E includes those projects that enable an entity to achieve permit compliance.

The project types will be determined based on information provided in the Annual Eligibility Survey. This information will not be used to prioritize projects.

51.6 PROCEDURES FOR ESTABLISHING THE PROJECTED LOAN LIST AND DISTRIBUTING FUNDS

- (1) The Projected Loan List shall be included in the IUP and, after a public notice and comment period, shall be presented to the Commission for final agency action at a public hearing. At a minimum, the Projected Loan List shall identify:
 - (a) The applicant;

- (b) project title;
 - (c) type of project;
 - (d) amount of financial assistance requested;
 - (e) subsidy rate index;
 - (f) whether the project is considered “green infrastructure”;
 - (g) whether the project is within the fundable range; and
 - (h) the rank of each project by the priority score determined according to the IUP.
- (2) The Division shall rank each project on the Projected Loan List based on the priority score of each project. Detailed scoring mechanisms shall be established in the IUP based on the following parameters:
- (a) Water quality improvement;
 - (b) financial capability and affordability;
 - (c) sustainability/green project reserve;
 - (d) enforcement/compliance; and
 - (e) readiness-to-proceed.
- (3) The Division shall identify the subsidy rate (if applicable) for each project on the Projected Loan List as identified in the IUP.
- (4) Prior to adoption of the Projected Loan List by the Commission, the Division shall determine which projects are within the fundable range for financial assistance.
- (a) In determining the fundable range, the Division shall evaluate each project for evidence that the project is ready to proceed. The Division shall consider the following factors when evaluating whether the project is within the fundable range:
 - (i) Evidence that the applicant has completed or will have completed preliminary planning and/or design documents in which funding is sought;
 - (ii) evidence that the applicant has completed or will have completed a project loan application for the calendar year in which funding is sought; and
 - (iii) evidence of debt authorization.

51.7 DISADVANTAGED COMMUNITIES

~~Under the Federal Act, states are authorized to provide “loans at or below market interest rates, including interest free loans, at terms not to exceed 20 years.”~~

The WPCRF may provide additional loan subsidies for governmental agencies that are determined to be “disadvantaged.” The definition/criteria of a disadvantaged community and the nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG.

While compiling projects on the Projected Loan List (utilizing the procedures listed in section 51.6 above), the Division will identify the community projects that qualify for assistance under the Disadvantaged Communities Program in accordance with the program definition and criteria.

51.8 PLANNING-AND-DESIGN, DESIGN AND ENGINEERING GRANTS

The Division may provide ~~planning and design~~, design and engineering grant assistance if funding is approved in the IUP according to section 51.3.

51.9 - 51.19 RESERVED